IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-443

KARIN S. QUAM, individually and as prospective Executrix of the Estate of HOWARD QUAM, deceased,

Petitioner,

—vs.—

MOBIL OIL CORPORATION,

—vs.—

PERTH AMBOY DRY DOCK CO.,

—vs.—

INTERSTATE INDUSTRIAL PROTECTION CO., INC.,

Respondents.

RESPONDENT INTERSTATE INDUSTRIAL PROTECTION CO., INC.'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Statement

Petitioner seeks review of a judgment of dismissal for failure to make out a prima facie case, which was unanimously affirmed by the Circuit Court and a rehearing denied. Petitioner offered no proof at trial against Interstate Industrial Protection Co., Inc., and presented no argument on appeal regarding dismissal of claims against Interstate, and no question of that dismissal is raised in the present petition.

POINT I

The petition fails to show error by the courts below and in essence merely reviews evidence and discusses facts.

The petition seeks to accomplish through indirection what plaintiff failed to establish at trial or on appeal. Through a series of boldly inaccurate statements petitioner would have the Court accept as facts what were, and remain, unfounded allegations.

In "questions presented" the petition states . . . "where a seaman drowned while returning to his ship" . . . But there was no proof where or when a mishap occurred. On the contrary, the evidence was that Mr. Quam had returned to his room aboard his vessel where personal possessions he normally carried with him were found. Petitioner testified that her husband always wore his wristwatch and if he did not have it on he would have it in his pocket. Both his wristwatch and wallet were found in his room the next day.

By manipulating quotes out of context followed by conclusions not in evidence, petitioner distorts the record and

misleads the Court. No facts were established to allow even an inference that Mr. Quam went into the water while returning to his ship. According to petitioner's own testimony, at 7:30 P.M. on May 3, 1976 Mr. Quam last spoke to his wife from a telephone booth on the pier some 100 feet from his vessel MOBIL CHICAGO. He told her that he was going right back to the ship to watch television in his room. There was no proof that Mr. Quam went anyplace but back to his room aboard ship right after the 7:30 P.M. phone call and the evidence is that he did.

The so-called areas of unsafe conditions were random samplings of photos remote from the normal route to the vessel. Numerous photographs were presented to both trial and appellate courts and the only two relevant ones show the access route to be normal and unobstructed. If anything they prove safe access to and from the ship. There was no claim of insufficient lighting and moreover Mr. Quam had crossed the same area earlier that day when he made a 5:50 P.M. phone call to his wife.

If any inference is to be drawn, the only valid one is that Mr. Quam made it safely back to his quarters and what happened thereafter can only be guessed. Evidence of a return to quarters renders moot claims of negligence or breach of warranty in places remote from the route to the ship. Decedent's movements between the time of his return to his stateroom and discovery of his body a mile up river off Staten Island the next afternoon are conjectural. Whether he fell or jumped from the MOBIL CHICAGO, or was a victim of foul play, is guesswork, but it is clear that petitioner did not sustain the burden of connecting death to negligence or breach of warranty.

The statement at Page 13 of the petition that both courts below found that safe passage was not given is

false. Alleged conditions of the pier, isolated from the route to the ship, were not proof of the condition of the area that lay between the phone booth from which decedent called his wife at 7:30 P.M. and the ship's gangway, depicted in two photographs as wide, clear walking areas down the center of the pier, and a clear open area on the car float leading to the ship's gangway. The wide ramp from pier to float was guarded by rails as was the gangway from float to ship.

The trial court stating that there is evidence for the jury to conclude that Perth Amboy was negligent was not a finding of negligence in any way related to the casualty, for in fact there was no such evidence. The Court went on to say that even assuming that negligent conditions existed, there is no evidence upon which the jury could conclude that such negligence was the proximate cause of the injury.

The essential elements of a prima facie case were absent because there was no proof that conditions complained of played any part, even the slightest, in causing the death. As the Second Circuit said, "*There was simply no evidence of causation.*" The essential elements must be proved. *Prosser on Torts,* 4th Ed. 1971, P. 241; *Norris, The Law of Seamen,* 3rd Ed., S. 693, P. 406; *Blier* v. *U.S. Lines,* 286 F.2d 920, 925 (2 Cir. 1961), cert. den. 368 U.S. 836. Pointing to isolated areas and labeling them poorly maintained does not connect a chain of events leading to the casualty. The Courts below studied the evidence on that point and found it inadequate.

Since the requisite connection of negligence to the casualty was missing, the trial Court's decision should not be disturbed unless clearly erroneous. *McAllister* v. *U. S.,* 348 U. S. 19 (1954).

The cases cited by petitioner are distinguishable on their own facts. In each one there were specific findings (or concessions, as in *Schulz* v. *Penn R. Co.,* 350 U.S. 523) of negligence or unseaworthy conditions, and evidence of the whereabouts of decedents placing them in proximity to those conditions prior to the casualty, so that cause and effect might be susceptible to a reasonable inference. In the present case no link was ever made between a negligent or unseaworthy condition and a resulting death. It never appeared that the death was the natural and probable consequence of a wrongful act or condition.

CONCLUSION

The petition should be denied.

Respectfully submitted,

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